

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ESTABLISHMENT OF A COLLABORATIVE)	
FORUM TO DISCUSS ISSUES RELATED TO)	ADMINISTRATIVE
NATURAL GAS UNBUNDLING AND THE)	CASE NO. 367
INTRODUCTION OF COMPETITION TO THE)	
RESIDENTIAL NATURAL GAS MARKET)	

O R D E R

Subsequent to completion of the Collaborative Forum's ("Collaborative") December 4, 1997 meeting the Commission was advised that a group of utility representatives ("utilities") working on draft gas unbundling legislation had reached consensus on a proposal. According to the utilities, a final decision has not been reached whether to seek introduction of such legislation during the 1998 General Session. Attached as an Appendix to this Order is a copy of the draft proposed legislation filed with the Commission and submitted to the record of this proceeding.

Three Collaborative meetings were scheduled and have been completed. The Commission's goal in establishing this case and the Collaborative was in part "to assure that proposed legislation regarding natural gas unbundling meets the public's interests and reflects the varied interests and concerns of all parties affected."¹ To help facilitate achievement of that goal the Commission is of the opinion that a fourth Collaborative meeting should be held for the purpose of discussing the utilities' draft legislation.

¹ Order entered October 9, 1997, Appendix B.

The Commission, on its own motion, HEREBY ORDERS that:

1. A fourth Collaborative meeting shall be held January 23, 1998, 10:00 - 12:00 noon, EST, in Hearing Room 1 at 730 Schenkel Lane of the Commission's offices in Frankfort, Kentucky. The purpose of the meeting is to discuss the draft gas unbundling legislation attached as an Appendix to this Order.

2. At the meeting Collaborative members shall provide written comments regarding the draft legislation, and provide copies to each Collaborative member. Collaborative members may file joint comments. Other intervenors to this proceeding may also provide comments at their discretion.

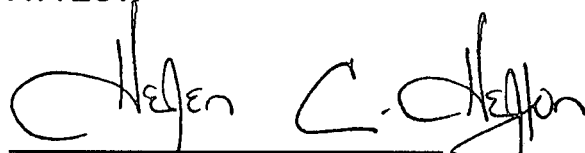
3. Submission of the Collaborative's Report due January 15, 1998 is held in abeyance until further notice.

Done at Frankfort, Kentucky, this 9th day of January, 1998.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN ADMINISTRATIVE CASE NO. 367 DATED JANUARY 9, 1998

AN ACT relating to competitive natural gas choices for consumers and alternative gas utility regulation.

Be It enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
READ AS FOLLOWS:
278.5__

(1) Findings. The legislature finds and determines that:

- (a) It is in the public interest to establish regulatory flexibility for the natural gas industry in Kentucky to permit competitive market forces to provide natural gas supplies and services.
- (b) In order to permit competitive markets for natural gas supplies and services to consumers, existing statutes and regulations must be modified to establish standards and procedures for direct access to competitive gas supply markets and services by retail consumers and to allow gas companies the opportunity to compete effectively in a competitive marketplace while maintaining safety and reliability of natural gas distribution systems.
- (c) This legislation provides a process permitting competition in the natural gas industry through unbundling of gas utility services and rates and deregulating those components of the natural gas industry subject to actual competition. It is the legislature's intent that this Section provide protection for consumers during and after the transition to a competitive natural gas market and to maintain and encourage safe and reliable natural gas service. The commission shall continue to regulate those natural gas services subject to monopoly power and will continue to regulate safety aspects of natural gas facilities pursuant to KRS 278.495.
- (d) It is the further intent of the legislature that this Section preserve undisturbed the existing tax base and resulting tax revenue to state, county, and municipal taxing authorities.
- (e) Therefore, pursuant to this Section the commission shall allow for an orderly and expeditious transition of the natural gas industry toward fully developed competition and provide for ratemaking methods which the legislature finds appropriate for the provision of natural gas services, including the recovery of service commitment costs, and the use of alternative forms of rate regulation.

(2) Definitions. In addition to the definitions set forth at KRS 278.010 and 278.504, the following definitions shall apply to this Section:

(a) "Affiliate" means another person which controls, is controlled by, or is under common control with such person. "Control" includes without limitation the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a person. A voting interest of 51% or more creates a rebuttable presumption of control.

(b) "Commodity sales service" means the sale of natural gas exclusive of any distribution or other service.

(c) "Distribution service" means the delivery of natural gas by and through the instrumentalities and facilities of a local distribution company, regardless of the party having title to the natural gas.

(d) "Electing distribution company" means a local distribution company which elects to become subject to the provisions of this section and satisfies the requirements of subsections (3) and (4), and includes any agent of or consultant to the electing distribution company.

(e) "Natural gas supplier" means any person registered with the commission and qualified by the commission to provide commodity sales service pursuant to subsection (5) or other services incident thereto to residential and small commercial retail customers connected to the facilities of an electing distribution company.

(f) "Obligation to serve" means the responsibility to contract or own intrastate or interstate transportation and storage capacity and gas supply, or other capability sufficient to provide commodity sales service to the relevant market.

(g) "Relevant market" means the market segment or group of customers receiving competitive commodity sales service or other unbundled competitive service.

(h) "Retail customer" means a residential or small commercial purchaser of retail commodity sales service or distribution service, and such purchase is not for the purpose of resale.

(i) "Alternative form of regulation" means a method of establishing just and reasonable rates and charges for a local distribution company without regard to methods based strictly upon cost of service, rate base, and rate of return. Alternative regulation may include without limitation one or more

of the following features: performance based mechanisms, earnings sharing, price caps, price-indexing formulas, ranges of authorized rates of return, gas cost incentives and the reduction or suspension of regulatory requirements.

(j) "Service commitment costs" means all costs and investments incurred by the local distribution company in unbundling its services, including but not limited to the costs associated with contracts for pipeline capacity and gas supply, gas storage and all costs associated with the process of unbundling services such as labor, consumer education, electronic systems development and others.

(k) "Unbundling" or "unbundled service" means to separate the provision of commodity sales service or other services from the provision of distribution services.

(3) Local Distribution Company Election to Unbundle Services. A local distribution company may elect to become subject to the provisions of this section by: (a) filing with the commission a notice and an application to establish just and reasonable rates, or (b) filing proposed unbundled rates that are directly derived from the cost of service adopted by the commission in the local distribution company's last general rate proceeding. A local distribution company that also provides retail electric service may file a rate proceeding exclusively for its gas utility services at its option. Pursuant to such application, the commission shall:

(a) Establish rates for distribution service.

(b) Establish separate rates and charges for each service unbundled by the electing distribution company. Such services may include, without limitation, storage, balancing, peaking, billing, meter reading, and turn on/off service.

(c) Provide for the recovery in rates of all service commitment costs.

(d) Adopt such rules or orders as necessary to ensure that natural gas suppliers meet their supply obligations, including but not limited to establishing penalties for failure to deliver natural gas and revoking registrations. Such rules or orders shall require that to the extent that a natural gas supplier fails to deliver adequate quantities of natural gas to the electing distribution company and the electing distribution company is required, in its discretion, to purchase natural gas and pipeline capacity or to utilize storage to replace such undelivered quantities, the electing distribution company shall be entitled to collect and the natural gas supplier shall be obligated to reimburse the electing distribution company

for all direct and indirect costs associated with such replacement natural gas supplies and pipeline capacity, and pay any applicable penalties.

(e) In addition to any other applicable filing requirements, any such application by a local distribution company shall:

1. Identify each of the components of natural gas service, including but not limited to commodity sales service, distribution service, and other services, which are to be unbundled and offered under separate rates, together with the total costs to provide each such service including a return on investment.
2. Propose to offer each unbundled service on an equal access, nondiscriminatory basis within the relevant market.
3. Describe the method by which the local distribution company proposes to restructure its existing contractual entitlement to interstate and intrastate pipeline capacity, gas supply, and storage capacity, including without limitation allocation to each certified natural gas supplier or customer of such contractual entitlement to interstate and intrastate pipeline capacity, gas supply, and any storage capacity, whether contracted for from third parties or owned by the electing distribution company.
4. Propose how the obligation to serve shall be satisfied, and associated costs recovered by the electing distribution company.
5. Revise the tariffs and rate schedules as necessary to implement the unbundled services.

(f) The commission shall review and accept for filing an application to unbundle local distribution company services filed pursuant to this section within 60 days of the date of filing and may suspend the operation of the proposed schedules and defer the use of the proposed rates, charges, classifications, or services for a period of not longer than five months from the date the application is accepted for filing. The commission may hold an evidentiary hearing with proper notice and opportunity for all parties to cross-examine witnesses, and shall issue an order accepting, modifying or rejecting the filing. If the application is not acted upon within five months from the date the application is accepted for filing, the proposed rates, charges, classifications and services shall go into effect and the application shall be approved.

(g) In the event the commission approves the local distribution company's unbundling application with modifications, either initially or

subsequently, the local distribution company may, within 30 days of the date of the order, elect to withdraw its application without prejudice to future reapplication and to continue to be regulated under the rates, terms and conditions that existed immediately prior to the filing of the application.

(4) Electing distribution company rules of conduct. An electing distribution company shall conduct its business according to the following standards, which are intended to prevent any advantage or disadvantage accruing to any natural gas supplier or its customers, including a natural gas supplier which is an affiliate of the electing distribution company or a division of the electing distribution company:

(a) Tariff terms and conditions shall be applied in the same manner to all natural gas suppliers and to all customers without respect to their natural gas supplier. Any discretionary right under a tariff provision shall be applied by the electing distribution company impartially to all similarly situated customers.

(b) No natural gas supplier or its customers shall be given any undue preference in matters relating to the processing of requests, the movement or delivery of gas or the administration of contracts, including scheduling, nomination, balancing, metering, storage, standby service, allocation or curtailment policy, billing and invoice questions and dispute resolution.

(c) No natural gas supplier shall receive any form of preference, directly or indirectly, relating to allocation, assignment, release, or other transfer of the electing distribution company's capacity contractual entitlement on interstate pipeline systems.

(d) The electing distribution company shall neither preferentially provide sales leads to any natural gas supplier nor express any preferential recommendation for a natural gas supplier that is an affiliate or division of the company or for any other natural gas supplier.

(e) Information provided to any natural gas supplier related to the marketing or sale or delivery of natural gas to customers or identified potential customers shall be contemporaneously disclosed to all natural gas suppliers on the system.

(f) An electing distribution company may not knowingly disclose to any natural gas supplier any confidential information obtained in connection with providing distribution or related services to any other natural gas supplier or customer, a potential natural gas supplier or customer, any

with providing distribution or related services to any other natural gas supplier or customer, a potential natural gas supplier or customer, any agent of such customer or potential natural gas supplier, or a natural gas supplier. However, an electing distribution company when requested in writing to do so by a customer of a natural gas supplier, may disclose confidential information relating to the customer only to said natural gas supplier.

(g) An electing distribution company shall maintain separate books of account and records from those of a natural gas supplier which is an affiliate or division or unit of the electing distribution company.

(5) Natural Gas Supplier Certification and Responsibilities. With respect to a natural gas supplier:

(a) The commission shall require a natural gas supplier to obtain a certificate of authority from the commission for each relevant market prior to offering to sell gas to residential or small commercial customers.

(b) Such certificate of authority with respect to a relevant market shall be issued upon a showing that the applicant:

1. possesses satisfactory financial and technical capability to render the proposed service; and,

2. has sufficient gas supply or other capability necessary to meet the requirements of such service.

(c) A showing of public convenience and necessity is not a condition for the issuance of a competing certificate of authority.

(d) A natural gas supplier who seeks a certificate of authority shall make an application to the commission which contains the information required by this section.

1. No later than December 31, 1998, the commission shall promulgate regulations describing the information to be included in an application for certification under this section and the criteria it will use in determining an applicant's financial and technical capability. Such criteria shall ensure that reliability and high quality of supply will be provided to consumers.

2. No such application shall be filed with respect to territory served by the local distribution company until such local distribution company has filed a notice of election pursuant to the provisions of

3. Until the expiration of 15 days following the effective date of rates approved by the commission pursuant to section (3) for an electing distribution company, the commission shall not approve or disapprove any complete application for a certificate of authority covering territory certificated to such electing distribution company which application is filed prior to such expiration date, and all applications for certificates of authority filed prior to such expiration date shall be considered by the commission simultaneously. The commission may hold a hearing to consider one or more applications.

4. Within 90 days following such expiration date, the commission shall issue its orders approving or disapproving each of such applications for a certificate of authority.

5. The commission shall issue its order approving or disapproving each application for a certificate of authority filed subsequent to such expiration date within 90 days.

(e) Any certificate of authority issued by the commission is subject to revocation, suspension, or adjustment where the commission finds upon complaint and hearing that a natural gas supplier has failed repeatedly or has failed willfully to meet obligations to its retail customers which are imposed by this article, regulations issued pursuant to this article, or the natural gas supplier's certificate of authority; has engaged in unfair competition; or has abused its market position.

(f) The commission may deny an application upon a showing that the applicant or anyone acting in concert with the applicant has a history of violations of laws, rules, or regulations designed to protect the public. The commission may revoke any certificate issued pursuant to this section where it finds that the natural gas supplier or anyone acting in concert with the natural gas supplier has such a history, that any information on the application was falsified or forged, that the natural gas supplier has acted unlawfully to the detriment of the public while certificated, or for any other good and valid reason where activities of the natural gas supplier are serving or could serve to mislead, deceive, or work a fraud upon members of the public. The commission shall be authorized to adopt rules and regulations, and to impose civil forfeitures, to implement this subsection. In any case where it is asserted in good faith that the natural gas supplier is, has been, or may be about to become involved in activities described in this subsection, any deadline imposed under this section regarding the granting of certification shall be null and void until such time as such assertions can be addressed.

granting of certification shall be null and void until such time as such assertions can be addressed.

(6) Trade Practices. The provisions of Title XXIX, Chapter 365, "Unfair Trade Practices," of the Kentucky Revised Statutes Annotated shall apply to any natural gas supplier providing service.

(7) Finding of Competitive Market Alternatives. An electing local distribution company shall offer each unbundled service to customers at rates and on terms approved by the commission in accordance with this section until such time as the commission determines that there are reasonably available competitive market alternatives to purchasing a service from the electing local distribution company. Upon application filed by the electing distribution company, the commission shall make a separate determination regarding competitive market alternatives for each type of service, based upon consideration of the following factors:

(a) The number and size of alternative providers of the type of service in the relevant market.

(b) The extent to which the service is available from alternative providers in the relevant market.

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions in the relevant market.

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of a service.

(8) Obligation to Serve.

(a) Upon a commission finding under subsection (7) that competitive market alternatives exist for a particular service in the relevant market, other than commodity sales service, that service shall be exempt from further regulation, and may be offered by the electing local distribution company at competitive rates that are not subject to the regulation or approval of the Kentucky Public Service Commission.

(b) Upon a commission finding under subsection (7) that competitive market alternatives exist for commodity sales service in the relevant market, the electing local distribution company shall have no further obligation to serve. The electing local distribution company shall choose and implement one of the procedures in subsection (c), (d), or (e) before

1. Aggregate all customers in the relevant market that have not elected a competitive commodity sales service supplier.

2. Determine the annual commodity sales service requirements for the aggregated group.

3. Conduct a competitive bidding process and select a competitive commodity sales service supplier for the aggregated group.

(d) The electing local distribution company may randomly assign all customers not under contract within the relevant market, on a pro rata basis, to the registered and qualified natural gas suppliers then providing such service pursuant to rules promulgated by the Commission. Upon assignment by an electing distribution company, a natural gas supplier shall not refuse to sell gas to a potential firm retail customer within the territory covered by the natural gas supplier's certificate of authority if the sale can be made by the natural gas supplier pursuant to the rules for service authorized by the natural gas supplier's certificate of authority and upon terms that will provide the natural gas supplier with just and adequate compensation. The price at which a natural gas supplier sells gas shall not be fixed by the commission.

(e) The electing distribution company may, through a division or unit of the company, provide commodity sales service, at competitive rates, to all customers within the relevant market that have not elected a natural gas supplier.

(f) Nothing in this section shall be construed to require a local distribution company, whether electing to unbundle or not to unbundle, to discontinue providing commodity sales service.

(g) The commission shall promulgate administrative regulations governing aggregation, competitive bidding requirements, commodity sales service supplier qualifications, and such other matters as it considers necessary for the implementation of this section.

(9) Capacity Release/Off-system Sales. Nothing in this Act shall prohibit a local distribution company, if consistent with federal regulation, from releasing interstate pipeline capacity and storage available to it from time to time and not required to serve the requirements of its retail customers and natural gas suppliers, or from making sales of gas with or without interstate transportation capacity to municipal corporations, other local gas distribution companies, or natural gas suppliers and end users connected to an interstate pipeline company or connected to another local distribution company.

(10) Pilot Programs. Nothing in this Act shall be construed to prohibit the commission from approving, upon application by a local distribution company, pilot programs which allow experimentation with increased customer choice on such local distribution company's system but which are not otherwise subject to the provisions of this section.

(11) Special Contracts. Any special or negotiated contract between a local distribution company and a retail customer approved by the commission shall not be invalidated or modified by the provisions of this Act.

(12) Alternative Form of Regulation. [Section under review.]

(a) Notwithstanding any other statute to the contrary, the commission may, upon petition of a local distribution company, after notice and opportunity for comment, and a hearing if the commission deems necessary, adopt for the petitioning local distribution company an alternative for establishing services and rates and charges for any gas service by a method other than that which is specified in this chapter, if the commission finds the alternative is in the public interest and is just and reasonable. The application shall not be governed by the commission's regulations concerning changes or withdrawal of rate schedules, notice or general adjustment in rates.

(b) A local distribution company proposing an alternative form of regulation plan under this section shall certify to the commission at the time of filing that it has published notice of its petition in the newspaper of general circulation in its service territory and that the published notice informed interested parties of their right to request intervention and a hearing within 30 days of filing the petition.

(c) In determining whether a proposal for alternative regulation is in the public interest, the commission shall consider the following:

1. Whether the proposal promotes increased efficiencies and cost control.
2. Whether the proposal is consistent with the provision of safe, adequate, and reliable service.
3. Whether the proposal is beneficial to local distribution company customers generally.
4. The existence of adequate safeguards to ensure that rates for services regulated pursuant to this chapter do not subsidize

unregulated activities.

5. Any other factors relevant to the petitioning local distribution company, for which the local distribution company has received notice from the commission prior to the hearing, that the commission may, on a case-by-case basis, determine are in the public interest.

(d) Within five (5) months after the filing of a petition pursuant to this section, the commission shall enter an order stating its final determination, unless there is good cause to continue the petition for longer than five (5) months, in which case the order making the continuance shall state fully the reasons for the continuance. If the commission has not rendered its decision ten (10) months after the filing of the petition, the alternative form of regulation proposed in the petition shall be effective at that time.

(e) Nothing herein shall prohibit the commission from having access to and examining the books and records of the local distribution company relating to an activity that is subject to alternative regulation pursuant to KRS Chapter 278 in order to determine compliance with the commission's rules respecting allocation of cost when setting rates for the local distribution company's regulated services.

(f) The commission shall retain jurisdiction over local distribution companies for which alternative regulatory requirements have been established pursuant to this section. In an order establishing an alternative form or regulation, the commission may prescribe a date to begin a review of the alternative form of regulation for the local distribution company to determine whether it is in conformity with the order and is just and reasonable. In addition, at any time, the commission, on its own motion, or pursuant to a complaint filed under KRS 278.260, after notice and hearing, if requested, may vacate or modify any orders establishing alternative regulation requirements if it determines by clear and satisfactory evidence that the findings upon which the order was based are no longer valid, or that the alternative regulation plan is no longer in the public interest.

(g) If the commission approves a local distribution company's plan for alternative regulation with any modification, or if an approved alternative regulation plan is modified upon subsequent review pursuant to subsection (6), the plan shall not become effective until twenty-three (23) days after service of the order establishing the plan. If the commission grants rehearing upon request of the petitioning local distribution company, the plan shall not become effective until the commission enters a final order on rehearing or until ninety (90) days after rehearing has

been granted, whichever is sooner. The petitioning local distribution company may, within twenty-three (23) days after service of any order establishing any alternative regulation plan, reject any plan which is a modification of the petitioning local distribution company's alternative regulation plan whether the plan is established pursuant to an initial order, an order on review pursuant to subsection (6), or an order on rehearing, and elect to continue to be regulated under the form of regulation that existed immediately prior to the filing of the petition.

(h) Nothing in this section shall be construed to limit in any way the commission's authority to establish rules and regulations generally applicable to local distribution companies providing service in this State.

(13) Application of Taxes to Commodity Sales and Distribution Services.

(a) Commodity sales service and distribution service provided to residential and small commercial customers are sales at retail and the gross receipts therefore are subject to the provisions of KRS Chapter 139.

(b) For the purpose of levying and collecting the utility gross receipts license tax pursuant to KRS Chapter 160, gross receipts for furnishing commodity sales service and distribution service provided to residential and small commercial customers shall constitute the furnishing of natural gas within the taxing district for application of KRS 160.613 to such gross receipts, notwithstanding that title to the natural gas passes to the consumer outside the taxing district.

(c) Commodity sales service provided to residential and small commercial customers within a municipality shall be subject to municipal franchise fees or assessments to the same extent as a local distribution company for the rendition of distribution service to the consumers within the assessing municipality, notwithstanding that title to the natural gas passes to the consumer outside the boundaries of the assessing municipality.

(d) All taxes or fees applicable to a natural gas supplier subject to the provisions of subsections (a) through (c) of this section shall be collected by the local distribution company providing the distribution service and paid to the appropriate taxing authority.

(14) Natural Gas Supplier's Agent for Service of Process.

(a) No person shall operate as a natural gas supplier in this state unless that person first does both of the following:

1. Consents irrevocably to the ongoing jurisdiction of the courts of this state and service of process in this state, including,

(a) No person shall operate as a natural gas supplier in this state unless that person first does both of the following:

1. Consents irrevocably to the ongoing jurisdiction of the courts of this state and service of process in this state, including, without limitation, service of summonses and subpoenas, for any civil or criminal proceeding arising out of or relating to such operation, by filing with the commission a document providing such irrevocable consent; and
2. Designates an agent authorized to receive such service of process in this state, by filing with the commission a document designating such agent.

(b) If the address of the person filing a document under subsection (a) of this section changes, or if a person's agent or the address of the agent changes the person shall file an amended document containing the new information.

(c) The consent and designation required by subsection (a) of this section shall be in writing, on forms prescribed by the commission. The original of each such document or amended document shall be legible and shall be filed with the commission, with a copy filed with the attorney general.

(d) Subsection (a) of this section does not apply to any of the following:

1. A corporation incorporated under the laws of this state that has appointed a statutory agent pursuant to KRS 271b.5-010;
2. A foreign corporation licensed to transact business in this state that has appointed a designated agent pursuant to KRS 271b.15-030; or
3. Any other person who is a resident of this state.

(15) Customer to Receive One Bill.

(a) The invoicing or billing for commodity sales service and any unbundled services shall be rendered to residential and small commercial customers through the electing distribution company, or an agent for the electing distribution company, such that the consumer receives one bill containing charges for distribution service, commodity sales service, and any services associated with the commodity sales service in sufficient detail to enable the customer to determine the basis for all charges.

(b) The provider of commodity sales service and any services associated therewith shall furnish to the electing distribution company billing data sufficient to enable the electing distribution company to bill the consumer.

(c) The local distribution company may charge the natural gas supplier for its cost of administration for inclusion of their charges in the bill rendered by the electing distribution company to the consumer, including, but not limited to, proportionate costs for collecting and paying any gross receipts, franchise, sales or other taxes, assessments, or fees.

(d) Any payment of a gross receipts tax, assessment or fee based on the gross receipts, or payment of charges received by the electing distribution company is recoverable by the electing distribution company by an adjustment of the charges by the electing distribution company for those consumers within the taxing authority levying the tax or assessment.

(e) The electing distribution company shall not be required to forward payment to the natural gas supplier for commodity sales service and any associated services billed by the electing distribution company before the electing distribution company has received payment for the commodity sales service and any associated services from the consumer. Payment by a consumer if not paid in full, will first be applied to charges for distribution service and the remainder pro-rated over the commodity sales service and other services provided by the natural gas supplier.

(16) Low Income Heating Assistance.

(a) In order to ensure continued access to a subsistence level of natural gas service for heating of residential premises of low income consumers within the State of Kentucky a Low Income Natural Gas Heating Assistance Fund, the Fund, is hereby created by this section.

(b) Administration of the Fund shall be by the Cabinet for Human Resources which shall:

1. Receive and administer any money made available within the Fund;
2. Determine and administer the criteria for determining eligibility of consumers heating their premises primarily by natural gas energy;

(c) The administrator may recover from a recipient the amount of assistance that the recipient is found ineligible to receive including penalties for fraudulently obtained assistance.

(d) All disbursements from the Fund of the administrator shall be to the electing distribution company delivering natural gas to the eligible low income consumer.

(e) The dollar level to be achieved for the continuous funding of the Fund shall be that dollar portion of the 1996 low income home energy assistance program funded by the federal government which was provided to low income consumers heating their residential premises with natural gas and receiving distribution service from the applicable electing distribution company.

(f) To maintain the sustainable dollar level of the Fund in the event federal funding of the low income home energy assistance program is below the November 1, 1996 dollar level, an electing distribution company shall pay into the Fund an amount to maintain the dollar level at the amount established in accordance with subsection (e) of this section with the source of the amounts to be paid by the electing distribution company into the Fund to be derived from implementation of a surcharge upon the rendition of distribution service to all residential consumers receiving distribution service from the electing distribution company.

(g) The commission shall annually determine the amount of the surcharge to be imposed by each of the electing distribution companies from the evidence submitted at a public hearing to determine the amount of the surcharge to be established for a twelve month period. Any report or analysis prepared by the commission's staff concerning the energy surcharge may be admitted into evidence at the hearing, subject to cross-examination by any party of the person who performed or directed the preparation of the report. In determining the surcharge the commission shall take into account that the amount of total reserves to be produced by the surcharge for the twelve month period shall equal the dollar amount established under subsection (e) of this section. Any surplus in the Fund shall be carried forward to the next period and credited against the amount that would otherwise be collected for that period through the surcharge.

(17) Remedies. No local distribution company shall be liable for any damages to any current or future customer if a natural gas supplier or provider of unbundled services fails to deliver such supply or service.

(18) Municipalities. Nothing in this section shall be deemed to apply or impose requirements not otherwise existing on gas distribution companies owned by any municipality, other political subdivision, or governmental authority of this state; nor are the provisions of this section intended to increase or decrease the authority and jurisdiction of the commission with respect to the distribution, sale, or transportation of gas by any municipality, other political subdivision, or governmental authority of this state. Nothing in this section shall be construed to limit or otherwise affect the existing powers of municipal corporations or other political subdivisions of this state relating to the granting of franchises or the levying or imposition of taxes, fees, or charges.

(19) Administrative Procedures. The provisions of law relating to parties, intervention, and discovery in proceedings before the commission shall apply with respect to proceedings under this section.

(a) All commission orders issued pursuant to this section shall contain the commission's findings of fact and conclusions of law upon which the commission's action is based. Any such order shall be deemed a final order subject to judicial review under Chapter 278 of the Kentucky Revised Statutes.

(b) At any time that the electing distribution company determines that any deadline or the expiration of any time period prescribed by this section may result in an adverse impact upon the overall effective implementation of this section, upon the emergence of effective competition, or upon the public interest, it may petition the commission to extend such deadline or period for a time certain. If the commission finds that strict enforcement of any deadline or time period prescribed by this section may result in an adverse impact upon the overall effective implementation of this section, upon the emergence of effective competition, or upon the public interest, it may extend such deadline or period for any period of time up to or equal to the time extension requested in the petition.

(20) Effective Date. This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(21) Supersedes. All laws and parts of laws in conflict with this Act are repealed superseded.